

### **REMARKS**

The Non-Final Office Action dated December 12, 2007 has been received and reviewed. Prior to the present communication, claims 1–37 were pending in the subject application. Each of claims 1–10, 35 and 36 has been amended and claims 31–34 have been cancelled, as herein above set forth. As such, claims 1–30 and 35–37 remain pending. It is respectfully submitted that no new matter has been added by way of the present amendments. Applicants respectfully request reconsideration of the present Application. Reconsideration of the pending application in view of the amendments and the following remarks is respectfully requested.

#### **Rejections based on 35 U.S.C. § 101**

The United States Supreme Court has recognized that the expansive language of 35 U.S.C. § 101 includes as statutory subject matter “anything under the sun that is made by man.” *Diamond v. Chakrabarty*, 447 U.S. 303, 308-09 (1980). The USPTO has adopted the Supreme Court’s interpretation and has stated that, in practice, the complete definition of the scope of 35 U.S.C. § 101 “is that any new and useful process, machine, manufacture or composition of matter under the sun that is made by man is the proper subject matter of a patent.” MPEP 2106(IV)(A). More specifically, the MPEP states that “computer programs are often recited as part of a claim.” MPEP 2106.01(I). In considering such claims, “USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim.” *Id.*; see also *In re Beauregard*, 53 F.3d 1582 (Fed. Cir. 1995). “The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the

computer program.” MPEP 2106.01(I). The MPEP further states that “[c]ertain types of descriptive material, such as music, literature, art, photographs, and mere arrangements or compilations of facts or data, without any functional interrelationship is not a process, machine, manufacture, or composition of matter.” MPEP 2106.01(II).

Claims 1-10 and 35-36 have been rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. More particularly, claims 1 – 10, 35 and 36 have been rejected as being directed to a computer readable medium which, as defined by paragraph [0033] of the present specification “defines computer readable medium as including communications media such as RF.” *Office Action*, page 2, ¶ 2. Each of claims 1-10, 35 and 36 has been amended herein to recite, in part, a “computer readable storage medium . . .”. The amended claims are believed to be directed to statutory subject matter and, accordingly, withdrawal of the 35 U.S.C. §101 rejection of these claims is respectfully requested.

**Rejections based on 35 U.S.C. § 121**

Each of claims 1–37 is stated in the Office Action to be subject to restriction. More particularly, it is stated in the Office Action at page 2, ¶ 3 that restriction to one of the following inventions is required:

- I. Claims 1-29 and 35-37, drawn to composing a desktop, classified in class 345, subclass 629,
- II. Claims 30-34, drawn to resizing a window, classified in class 345, subclass 660.

Applicants hereby elect, without traverse, the invention of Group I. Applicants respectfully reserve the right to file a divisional application directed to the non-elected claims in Group II.

### **CONCLUSION**

For at least the reasons stated above, claims 1-30 and 35-37 are now believed to be in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or [twilhelm@shb.com](mailto:twilhelm@shb.com) (such communication via email is herein expressly granted) – to resolve the same.

It is believed that no fee is due in conjunction with the present amendment. However, the Commissioner is hereby authorized to charge any amount required, or credit any overpayment, to Deposit Account No. 19-2112, referencing attorney docket number MFCP.139600.

Respectfully submitted,

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